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land for the specific purposes for which it is taken contemplates; for in the very nature of things its appropriation is a condition precedent to the existence of the improvement, and it cannot share in the effect of the change to create which it must be used."

HOMICIDE—EVIDENCE—CONDUCT OF ACCUSED.—*STATE V. LEO*, 77 ATL., 523 (N. J.).—*Held*, that evidence that accused, in a prosecution for killing his wife, at the time of her funeral looked on her dead body, touched and kissed it, was inadmissible to show the existence of love for her during life.

Upon a trial for murder, the prevalent rule is that evidence tending to show the accused's feelings toward the person killed is admissible, to show a motive for the crime. *People v. Kern*, 61 Cal., 244. So on the prosecution of a man for the murder of his wife, it is proper to show the character of the relations between them. *Siberry v. State*, 39 N. E. (Ind.), 936. This may be done by showing the pendency of a divorce action, *Binns v. State*, 57 Ind., 46, or by proof of the adultery of accused and another, *St. Louis v. State*, 8 Nebr., 405. By analogy to the rule of a declaration against interest, the conduct of accused and another female on the day of the burial may be shown. *State v. Hinkle*, 6 Clarke (Ia.), 380. Also, that on the day after the homicide, defendant shed no tears, and was indifferent. *Greenfield v. People*, 85 N. Y., 75; *semble*, *People v. Bemis*, 51 Mich., 422. But it has been held that statements made by accused to third persons after the homicide are not admissible as evidence in his own behalf. *State v. Talbert*, 41 S. C., 526. However, statements in his own interest, and by analogy, his conduct, three or four minutes after he had shot deceased, are admissible, as part of the *res gestae*. *Harrison v. State*, 20 Tex. App., 387.

INDEMNITY—CONTRACT—WHAT CONSTITUTES.—*HILLIARD V. NEWBERRY ET AL.*, 68 S. E., 1056 (N. C.).—*Held*, that a bond to indemnify plaintiff against any damage he may suffer by reason of a mortgage on land, which was also a promise to pay a certain sum by a certain date, was not strictly a contract of indemnity.

Indemnity may be defined as the obligation or duty resting on one person to make good any loss or damage another has incurred while acting at his request or in his behalf; *Vandiver v. Pollak*, 107 Ala., 547, and differs from contracts to pay a certain sum of money or to do a certain act in that, the case of a bond or contract conditioned to indemnify damage must be shown before the party indemnified is entitled to recover, whereas, a cause of action accrues on a bond or contract to do a certain act as soon as there is a default in performance, whether the obligee or promisee has suffered damage or not. *Northern Assurance Co. v. Borgelt*, 67 Nebr., 282; *Henderson-Achart Lith. Co. v. Shillito*, 64 Ohio St., 236. It is undoubtedly true, as a general proposition, that in order to recover upon a bond or agreement to indemnify and save harmless, actual damage must be proved and shown. *Churchill v. Hunt*, 3 Denio (N. Y.),